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19 February 1948

MEMORANDUM FOR THE CHIEF ADVISORY COUNCIL

SUBJECT: Crypto Security Bill.

1. Comment has been requested in connection with the draft of 13 February 1948 to a proposed memorandum for the USCICC Secretariat on the subject of the Crypto Security Bill, S. 1019.

2. No comment is made as regards the text of Admiral Stone's remarks as it is outside the jurisdiction of this office.

3. While there is always a chance of testimony given in Executive Session becoming public through leaks in the Committee, there is an equally good chance that this can be headed off. Admiral Stone would be well within his rights in refusing to discuss any operational aspects of communications intelligence and prior arrangements with the Chairman of the respective Judiciary Committees in the House and Senate might foreclose any embarrassing line of questions in connection with operations. The success in the field of communications intelligence is a matter for the Armed Services Committees and not the Judiciary Committees, and it is felt that this type of questioning can be foreclosed in advance.

4. The question of the practicality of undertaking prosecution under the bill if passed is one which will have to be considered in each case. However, if such a bill can be enacted with a minimum loss of security, it is always preferable to have such a law on the statute books.

5. In connection with paragraph 5 of your draft, as stated above, the security risks can be minimized by careful discussions with the appropriate Committee Chairmen in advance. This can be furthered following favorable Committee action on the bill by discussion with the Republican and Democratic leadership in both houses in an attempt strongly to limit debate. The

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greatest danger in debate will be ill-advised screams from some members of the press that the bill invades freedom of the press and civil rights. This attack, I feel, can be successfully met.

6. I am still of the opinion that there is small hope for passage of this bill at the present time. This is a short session of the Congress. In the Senate the top three Republican members of the Judiciary Committee are pretty well tied up, Senator Wiley, the Chairman, with ERP and the Foreign Relations Committee, Senator Langer with the problems of Civil Service, and Senator Ferguson with his special investigations and Appropriations Committee work. If the Secretary of Defense were able to get an informal opinion from Senator Wiley and Representative Michener, the two Judiciary Committee Chairmen, it would be most helpful. It is also recommended that the opinion of Senator McGrath of Rhode Island, a Democratic member of the Senate Judiciary Committee, be obtained. It should be noted that Senator McGrath is Chairman of the Democratic National Committee. On the House side, it might be worthwhile to approach Congressman Keating of New York on an informal basis as he has just been confirmed as a Brigadier General either in the National Guard or in the Reserve, and is extremely mindful of the security aspects of intelligence. One further word of caution should be noted in connection with security in the House Committee, and that is that the senior Democratic member is Emanuel Celler of New York, a left-wing New Dealer, whose foreign policy outlook is very close to Henry Wallace and who will therefore prove to be, I am sure, a bad security risk on any sub-committee which might consider our bill.

7. In conclusion, it is my opinion that the possibility of securing this legislation at this session is doubtful. In addition, as pointed out by the General Counsel in a memorandum to Mr. Collins on this subject on 29 August 1947, there is considerable doubt as to the legality of proposed bill. This is due largely to the omission of any question of "intent" as an element of the crime. In view of the Supreme Court decision quoted in General Counsel's memorandum, it is felt that such an omission would be fatal. Furthermore, as pointed out in that memorandum, the use of the phrase "classified information" might "invalidate the whole bill . . .

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since the classification was an administrative act it would force a person, at his peril, to speculate as to whether certain actions violated the statute". It is felt doubtful that in its present form the bill would have the approval either of the Department of Justice or the Bureau of the Budget, both of whom must concur prior to its being forwarded to the Hill. Loss of time necessary in securing approval for the proper type of legislation will almost preclude its consideration at this session. It is our opinion, however, that an attempt should be made to secure a proper type of bill including the changes indicated in General Counsel's memorandum to Mr. Collins cited in this paragraph.

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